

# **EXHIBIT C**

CAUSE NO. \_\_\_\_\_

2013-03258

**FILED**

Chris Daniel  
District Clerk

JAN 17 2013

Time: \_\_\_\_\_

By \_\_\_\_\_

Harris County, Texas  
Deputy

MEHDI CHERKAOUI,

Plaintiff,

v.

SANTANDER CONSUMER  
USA, INC.

Defendant

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

*270*

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Mehdi Cherkaoui (hereinafter "Mr. Cherkaoui") files this petition and for cause of action will show the following:

**Discovery Control Plan**

1. The plaintiff intends that discovery in this case is to be conducted under level 2 as described by Texas Rule of Civil procedure 190.

**Parties**

2. The plaintiff is an individual who resides and did reside in Texas at all relevant times.
3. Defendant Santander Consumer USA, Inc. (hereinafter "Santander") is, upon information and belief a corporation doing business in Texas and maintains a physical address at 8585 North Stemmons Freeway suite 1100- North Dallas TX

75247. Santander will be served by serving its registered agent CT Corporation System, 350 N. Saint Paul ST STE 2900 Dallas, TX 75201-4234.

#### Jurisdiction

4. The court has general jurisdiction, and in the alternative specific jurisdiction, over Santander because, upon information and belief, 1) it is incorporated in the State of Illinois but maintains principal place of business in Texas, 2) it has committed a tort in whole or in part against a Texas resident, and/or 3) it has sufficient minimum contacts and this court asserting jurisdiction over Santander does not offend traditional notions of fair play and substantial justice.

#### Venue

5. Venue is proper in Harris County. Specifically, Venue is mandatory in Harris County, Texas, pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE § 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Harris County, Texas

#### Factual Allegations

6. Upon information and belief, the Plaintiff purchased a 2001 BMW from Carmax Inc., a used car retailer in July of 2009. Carmax Inc., is not a party in this litigation. Carmax Inc. subsequently informed Mr. Cherkaoui that Santander would be his lender and that payment will have to be sent to Santander. Santander

has, intentionally and knowingly, placed calls using an automated telephone dialing systems also known as “robocalls” to Plaintiff’s cell phone in an egregiously excessive manner each time Plaintiff has not made his payment within the due date. Upon information and belief, the plaintiff estimates the number of calls made to his cellular phone by Santander using the aforementioned robocalls exceeds 700 calls to his cell phone and counting.

7. Mr. Cherkaoui has provided name and phone number of references on the credit application he filled out at Carmax Inc. Mr. Cherkaoui provided information of said references only for the purpose of verification in order to obtain credit in relation to the purchased vehicle. Mr. Cherkaoui has not given consent, express or implied to Carmax Inc. or Santander to contact these references in relation to debt collection efforts by Santander.
8. On or around January of 2010, after receiving a phone call from one Santander representative, Mr. Cherkaoui asked the representative to stop calling his cell phone because they have caused a great deal of annoyance and harassment. Nevertheless, Santander continued calling Mr. Cherkaoui’s cell phone any time his payment was past due by as little as one day. Mr. Cherkaoui continued to receive robocalls on his cell from Santander totaling in certain instances up to 12 calls per single day.

Cause of Action for Violation of Chapter 392 of the Texas Finance Code also known  
as the Texas Debt Collection Act

9. In the alternative without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, upon information and belief, Santander is liable to the Plaintiff for violation of the Texas Debt consumer Act (herein "TDCA") found in chapter 392 of the Texas Finance Code. Upon information and belief, Santander violated the TDCA in its attempt to collect late payments from the plaintiff. The act applies to entities attempting to collect its own debt. See *Monroe v. Frank*, 936 S.W.2d 654 (Tex. App. Dallas 1996). Upon information and belief, Santander violated at least the following sections and paragraphs of the TDCA:

Section 392.302(4) by oppressing, harassing or abusing a person by causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

The Plaintiff seeks (1) injunctive relief to prevent or restrain a violation of one or more of the above described sections and/or paragraphs, (2) actual damages sustained as a result of such violations, and (3) attorneys' fees and costs.

Cause of Action for Invasion of Privacy (Intrusion on Seclusion)

10. In the alternative without waiving any of the other causes of action plead herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent

with the cause of action pled here, upon information and belief, Santander is liable to the Plaintiff for invading Plaintiff's Privacy (intrusion of Seclusion).

Congress recognized a consumer's right to privacy in financial data in passing the Gramm Leech Bliley Act, which regulates the privacy of consumer financial data for a broad range of "financial institutions" including debt collectors (albeit without a private right of action), when it stated as part of its purposes:

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

15 U.S.C. § 6801(a) (emphasis added).

Santander and/or its agents intentionally, recklessly, and/or negligently interfered, physically or otherwise, with the solitude, seclusion and or private concerns or affairs of the Plaintiff, namely, by repeatedly and unlawfully ringing Plaintiff's cell telephone in a harassing and abusive manner thereby invaded Plaintiff's privacy.

Santander and its agents intentionally, recklessly, and/or negligently caused emotional harm to Plaintiff by engaging in highly offensive conduct in the course of collecting this debt, thereby invading and intruding upon Plaintiff's right to privacy. Plaintiff had a reasonable expectation of privacy in Plaintiff's solitude, seclusion, private concerns or affairs, and private financial information.

The conduct of this Santander and its agents, in engaging in the above-described illegal collection conduct against Plaintiff, resulted in multiple intrusions and invasions of privacy by this Santander which occurred in a way that would be

highly offensive and harassing to a reasonable person in that position.

As a result of such intrusions and invasions of privacy, Plaintiff is entitled to actual damages in an amount to be determined at trial from Santander.

All acts of Santander and its agents and/or employees were committed with malice, intent, wantonness, and/or recklessness and as such Santander is subject to punitive damages.

Cause of Action for Violation of the Federal Telephone Consumer Protection Act

11. In the alternative without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, upon information and belief, the Defendant is liable to the Plaintiff under the Federal Telephone Consumer Protection Act (47 U.S.C. § 227 *et. Seq.*) (hereinafter the "TCPA"). Santander has repeatedly violated section 227(b)(1)(A) of the TCPA by the calls made to Plaintiff, specifically the numerous calls by illegal automatic dialers that have been unleashed in an abusive amount against Plaintiff by Santander.  
  
Santander has repeatedly violated the TCPA by the calls made to Plaintiff, specifically the numerous calls by illegal predictive dialers that have been unleashed in an abusive amount against Plaintiff by Santander.  
  
Santander has repeatedly violated the TCPA by the calls made to Plaintiff, specifically the numerous calls by illegal pre-recorded messages that have been unleashed in an abusive amount against Plaintiff by Santander.

There is no exception or justification for the numerous violations of the TCPA by Santander as Santander does not have Plaintiff's consent, express or implied to Plaintiff's cell phone and Plaintiff instructed Santander it had no permission to call his cell phone but the calls continued.

The Defendant's actions caused the Plaintiff to suffer statutory damages in accordance with 47 U.S.C. § 227(b)(3)(B). Further, upon information and belief the defendant willfully and knowingly violated section 227(b)(1)(A) of the TCPA. Accordingly, the court should increase the amount of any award to an amount equal to not more than three times the amount available under section 227(b)(3)(B) of the TCPA. The Federal Telephone Consumer Protection Act creates a federal private right of action but confers exclusive jurisdiction to state courts to entertain such an action. *See The Chair King, Inc. v. GTE Mobilnet of Houston, Inc.*, 184 S.W.3d 707, 710 (Tex. 2006); *See also Chair King, Inc. v. Houston Cellular Corp.*, 131 F.3d 507, 510 (5<sup>th</sup> Cir. 1997).

Cause of Action for Violation of Section 35.47 of the Texas Business and  
Commerce Code

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12. In the alternative without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, upon information and belief, Santander is liable to the plaintiff for violating section 35.47 of the Texas



Business and Commerce Code. Santander violated the TCPA. Therefore, Santander violated section 35.47(f) of the Texas Business and Commerce Code. The Plaintiff is entitled to an injunction pursuant to that paragraph and \$500 for each phone call which violated the TCPA. Further upon information and belief, Santander willfully and knowingly violated the statute. Therefore, the court should increase the amount of the Plaintiff's award to up to \$1500.00 for each such telephone call.

#### Exemplary Damages

13. Exemplary damages should be awarded against Santander because the harm with respect to which the Plaintiff seeks recovery of exemplary damages resulted from gross negligence (which means that defendant's acts and/or omissions (i) when viewed objectively from the Defendant's standpoint at the time of the acts and/or omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm to others and (ii) were such that defendant has an actual subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Exemplary damages are warranted with the consideration that Santander's abusive and illegal conduct is pervasive and rampant.

#### Request for Permanent Injunction

14. The court should permanently enjoin Santander following trial of this cause from committing acts in violation of the statutes cited herein.

Request for Record

15. Pursuant to Texas Government Code section 52.046, the Plaintiff hereby requests that an official court reporter attend and make full record of all hearings in this case.

Request for Disclosure

16. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Santander is requested to disclose within 50 days after service of this request, the information or material described in Rule 194.2.

Prayer


17. For these reasons, the Plaintiff asks that the Defendant be cited to appear and answer and that the Plaintiff have judgment for damages within jurisdictional limits of the court and against Defendant for:

- a) Actual damages;
- b) Statutory damages (pursuant to TCPA)
- c) Statutory damages pursuant to § 35.47 of the Texas Business and Commerce Code)
- d) Exemplary damages
- e) Pre-judgment and post-judgment interest at the highest rate
- f) Legally available reasonable and necessary attorneys' fees

- g) Costs
- h) A permanent injunction against Santander enjoining it from committing the unlawful conduct described in this petition; and
- i) All other relief, general and special, legal and equitable to which the Plaintiff is entitled.

Respectfully submitted,

Mehdi Cherkaoui

A handwritten signature in black ink, appearing to be 'Mehdi Cherkaoui', is written over a horizontal line.

Mehdi Cherkaoui  
3011 W. Cedar Sun  
Katy, TX 77449  
Telephone: (281) 636-8300

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing instrument has been properly forwarded to Santander registered agent of record listed below by United States Certified Mail Return Receipt Requested on 17<sup>th</sup> day of January 2013, addressed as follows:

**Via First Class Mail to:**

CT Corporation System,  
350 N. Saint Paul ST STE 2900  
Dallas, TX 75201-4234

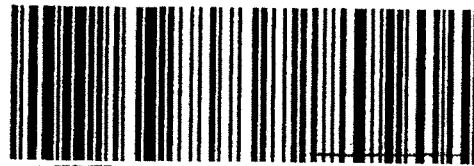


Mehdi Cherkaoui  
3011 W. Cedar Sun  
Katy, TX 77449



Constable Alan Rosen  
Harris County Pct. 1  
POBOX 52578  
Houston Texas 77052-2578

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE  
**CERTIFIED MAIL**

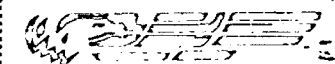


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addressee only, restricted delivery!



U.S. POSTAGE >> PITNEY BOWES



ZIP 77002 \$ 009.50<sup>0</sup>  
02 1W  
0001371269 JAN 22 2013

RETURN SERVICE REQUESTED

SANTANDER CONSUMER USA INC

BY SERVING ITS REG. AGENT  
CT CORPORATION SYSTEM

350 N. ST. PAUL ST.  
DALLAS TX 75201-4234

PLEASE  
DO NOT FORWARD  
UNLESS LISTED ONLY!